

Parliamentary Debates

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commissioner went on to say that too often those who could provide evidence were themselves implicated, and were unwilling to incriminate themselves.

I suggest that, in making those remarks, the Commissioner of Police implied that some people might want to give information but might be diffident about giving it to the police. It may well be that people who are reluctant to do that would be prepared to give evidence to a committee of the House. If a select committee deemed it desirable, it would not be necessary for evidence to be given in public. I know of occasions in the past when hearings of select committees have been open to representatives of the news media, but evidence has been taken in confidence at the request of a witness. I feel sure that in certain circumstances many people would come forward and give evidence on a confidential basis. Why should people not be given opportunity to supply information they may have about drug dealing?

I am aware that, as a result of the release of the "Eye Witness" programme script by the member for Auckland Central, an approach has already been made to the police. If a committee were set up to hear evidence and, in appropriate circumstances, to take that evidence in confidence, I feel sure that other people would follow a similar course.

Why should there not be a bipartisan approach to the drug problem? Why should Opposition members not be permitted to help in tackling the problem? After all, Labour Party members obtained the majority of the votes, and they could assist the Government by providing initiatives, policies, and ideas that would help Parliament and the country as a whole. If the Government is keen to stamp out drug trafficking, as it claims, it ought to accept that approach.

As the Commissioner of Police has pointed out, the police do not require additional powers as much as they need information from the public. Of course, they should also have additional manpower and resources to enable them to do their job, and Government should ensure that they are so supplied. Why did the National Government say in its manifesto that it would provide for the needs of the police and then deny them the additional manpower to enable them to deploy their staff and tackle the drug scourge far more effectively than they can with the limited resources at their disposal?

Hon. DAVID THOMSON (Minister of State): I am sure that the House and the country know that under the National Government the New Zealand Police are being given additional manpower and resources. As we showed last year, and again this year in Parliament, the police are also being given the additional legislative powers they need to investigate, detect, and apprehend drug dealers.

I am glad that a member of the Labour Opposition suggested that there should be a bipartisan approach to the drug problem. I agree. The bipartisan approach should be taken by all members of Parliament supporting the police and customs officers in their job of detection and apprehension of drug offenders. We should not try to take over their job or to imperil their undercover agents. Let them get on with the job. The National Government has confidence in the New Zealand Police and, as is recognised by members on the other side of the House, the police themselves have said that the National Government has given them the extra powers they need.

[The hour set down for the suspension of the sitting having arrived, the motion lapsed.]

Sitting suspended from 5.30 p.m. to 7.30 p.m.

FREEDOM OF INFORMATION BILL

Second Reading

Mr SPEAKER: Before I call the honourable member for Auckland Central I should point out that the Bill involves an appropriation, and it is my responsibility to advise the House that, without the leave of the House, it should not proceed.

Hon. DAVID THOMSON (Leader of the House): It has been agreed between the parties that we should have a courtesy debate on the second reading of the Bill. Each side shall have an hour, the time to be used as each party sees fit, with no specified time for each member.

Mr SPEAKER: I assume there is no objection to that course being followed. There appears to be none.

Mr PREBBLE (Auckland Central): I move, *That this Bill be now read a second time.* The basis of the Bill is the belief that citizens have a right of access to official information. The Bill will die tonight, because it will not receive the royal assent. But it need not die. It could be sent to a select committee that could hear on a non-partisan basis, evidence from interested parties and report back to Parliament. After the introduction debate I wrote to a sample group of organisations that I knew were interested in freedom of information, and the response I received was unanimously favourable to the idea of sending the Bill to a select committee.

Hon. J. K. McLay: Unanimously?

Mr PREBBLE: Yes, I received no letters against that idea.

Mr Malcolm: From whom?

Mr PREBBLE: I received communications from the law societies in Napier and Christchurch, the United Nations Association, the Libraries Association, the Peace Foundation, the Native Forest Action Council, the Auckland All Parties Committee on Freedom of Information, the New Zealand Federation of University Women, the Environmental Council, and, as I am in favour of freedom of information, I must say that I received a communication from the Values Party saying that it was in favour.

I would be able to give a much longer list to the House were it not for the ironical fact that the Danks committee, which is at present looking into the issue of freedom of information, refused to make available a list of people who had made submissions. I think that is unprecedented, because even Parliament tells people the names of persons or organisations who have made submissions to any committee.

The Government has said that it is in favour of freedom of information in principle. That is progress, because at the time of my first Bill on this subject the Government appeared to be divided. Parliament must take a lead. Freedom of information is essentially a parliamentary issue, because it is basically our approach to government. Parliament is the House of Representatives and the people's watchdog. The effectiveness of parliamentary government is being undermined by secrecy.

The importance of this issue became apparent to me when I realised just how much the Government and the Executive can keep the House in the dark on issues of major importance. Such secrecy is affecting the future of this institution. I should like to give an example. One of the main issues during the 1972 election campaign was whether a Springbok team should tour New Zealand. Every one knows now that the Government of the day had received a police report that stated that public safety could not be guaranteed if the tour went ahead. That report should have been one of the issues debated during the election campaign, but instead the campaign was fought under a misconception. The Opposition, the public, and the media had no idea that the police considered that the safety of spectators would be at risk. The Labour Party would never agree to the Army being put in control of a sports match, and indeed the Armed Forces themselves were appalled at the prospect. Therefore, the Labour Government cancelled the tour.

Mr Malcolm: What's your point?

Mr prebble: My point is that this sort of secrecy corrupts democracy and makes a sham of elections. I do not intend to go through each clause, as clearly it will not be necessary, but I want to tell the House that I have adopted the proposals of the public issues subcommittee of the Auckland District Law Society, which was so impressed with the drafting of the Bill that it took the most unusual step of endorsing it in principle.

The case for freedom of information is essentially the case for democracy. In moving the first great Education Act 100 years ago, Foster told the British Parliament that if it wanted to preserve democracy it must educate its masters, the voters. Today if we want to preserve democracy, and for democracy to mean the rule of reason and not the rule of television commercials, we must take steps to ensure that our masters, the voters, are kept informed. It has been said that knowledge is power, and that secret knowledge is absolute power.

Rt. Hon. B. E. Talboys: Said by whom?

Mr PREBBLE: Said by me! As the Government collects, compiles, sorts, and stores thousands of items of information its powers increase accordingly. The Official Secrets Act ensures that this information is kept absolutely secret. Throughout the century the range of activities with which the Government has become involved has expanded until today the Government intrudes into nearly every facet of our lives and every part of our society. More than 40 percent of our gross national product comes from the government sector.

The entire range of Government activity is covered by the Official Secrets Act. It is an

offence not only for a civil servant but for anyone who acquires official information to disseminate it for any purpose whatever to another person. This has meant that the Government has become a secret society within society. It may very well be a beneficial society with the highest ideals run by civil servants of the highest integrity, as I believe it is, but that does not alter the fact that the Government in New Zealand is a secret society.

The position of the individual *vis-a-vis* his Government has deteriorated while the Government's power to collect, store, and use information—all in secret—has increased. Surely the basis of democracy is the ability of a well-informed citizen to be able to enter into an intelligent and meaningful discussion with his Government as to the options citizens want the Government to pursue. Today that is not possible. Abraham Lincoln, one of democracy's greatest advocates, put forward a definition of a democratic government, a definition I personally agree with—"Government of the people, by the people, for the people." One can say without fear of contradiction that none of these statements is true of our system of government today.

Today, democracy is threatened, and it is not from extremists of the left or the right. They are small in number and easily identified, and we can protect ourselves and society from them. We are threatened as a democracy by modern life itself. It is worth noticing and pondering that only 10 years ago it was simply not possible to build a computer like the Wanganui computer, which is collecting, compiling, and sorting information, and making usable millions of items of information about New Zealanders. The Government's power to collect and use information has grown quickly. Today, our Government collects and uses more information in a day than the Seddon Government—only 80 years ago—would have collected in a year. This is a threat to democracy, because knowledge is power, and unshared knowledge leads to autocracy.

How can the ordinary citizen enter into an intelligent dialogue or discussion with his Government when, for example, the Prime Minister's department alone has 78 people? The Prime Minister has access to computers, libraries, lawyers, accountants, thousands of civil servants, and hundreds of thousands of files, none of which is available to the citizen, and none of which is available even to members of Parliament. Eighty years ago, well-informed, intelligent citizens probably knew as much about government as any member of Parliament. Today, that citizen is completely in the dark.

Let us take just one example of Government action this year. The Government announced that it was going to increase the electricity price by 60 percent. The Electricity Department is a government monopoly, and many New Zealanders living in electricity-only homes with no chimneys have no option but to pay. The Government claims that the reason for the electricity price rise is the cost of production. Members on this side of the House have said they believe that the price rise is a tax to pay for superannuation and the cost of the huge Government deficit. The ordinary citizen must take his choice, not on the information placed in front of him, but according to his prejudices. There are no meaningful figures in front of the public about the true cost of electricity and the options of the Electricity Department. Indeed, in the whole field of energy, no meaningful statistics are made available from the Government concerning the energy policies it is pursuing.

But the situation is worse than that. The Government not only keeps matters secret, but, worse still, it selects pieces of information favourable to itself and publishes them. Earlier this year the Prime Minister insisted that the news media disseminate this information even though, taken on its own, it is almost totally meaningless. I would go so far as to say that some Government communications appear to be designed to deceive. What possible justification can there be for not having an open and free dialogue on a question such as energy supplies?

Let us have a look at the converse effect of keeping information secret. One of the bases of parliamentary democracy is that only this House can levy a tax. Parliament fought a civil war with the Crown to establish that principle. It has to protect the citizen, and yet the Government can, through a Government monopoly increasing its prices, levy a secret tax and so undermine the whole basis of parliamentary democracy. King Charles lost his head for doing far less.

It has been suggested that Governments need secrecy in order to operate efficiently. This is self-evidently absurd, and we have evidence of its absurdity in the Frank Holmes report, which said that as a result of secrecy the left hand of Government does not know what the right hand is doing. The effect of freedom of information legislation in America has resulted in some spectacular improvements in efficiency. Take the Customs Department as

an example. Before it published the manuals on which decisions were made on duties, 50 000 appeals a year were lodged. After the legislation, there were only 11 000 appeals a year—an enormous saving of civil servants' time. If the immigration division did the same, the Under-Secretary would not be so overburdened with appeals.

It is important that mistakes in Government are revealed. It is correct to say that if doctors bury their mistakes, then bureaucrats hide them in secrecy. The main case for a freedom of information law is the belief that where public scrutiny of a Government's decision is possible, mistakes are less likely to occur.

The problem of freedom of information has been tackled in a number of countries. It is time that New Zealand took a lead. We have the Danks committee meeting in secret considering what can be made public. Frankly, I am sceptical that this committee, made up mainly of civil servants, will produce anything radical or meaningful. I believe that the committee is looking at the issue from the wrong point of view. It is looking at it from the civil servants' point of view, but we should look at it from the point of view of the public.

I am convinced that what is required in New Zealand is a law creating the right of the public to have access to official information. That is the basis of the Bill in front of the House today. I do not believe that any administrative decision to create freedom of information will be meaningful. The Whitlam committee in Australia attempted to tackle the problem in that way, but was clearly circumvented by the efforts of civil servants. The only way in which information can be freed to the public is to make it possible for a member of the public to request information and to apply to some tribunal, free of Government, for that information to be supplied. In this case, it means the Ombudsman.

In conclusion, I wish to draw to the attention of the House two other companion measures that are required. The House must look at the Official Secrets Act, because, as the member for Hamilton West has so cogently pointed out on many occasions, that Act is an anachronism, and large sections of it ought to be repealed. The British Franks committee, as a result of scandals in Britain, decided that the Official Secrets Act was too harsh and could be used to circumvent the right of the public to know, and our Act is a direct copy. Another companion measure that ought to be passed is one to protect the privacy of the individual.

I believe that the public wants more individual freedom, and if given it, will use it responsibly. We can achieve an open and free society only if this Parliament is prepared to fight for it, to insist on it, and to refuse to accept anything else. I challenge the Minister tonight to move that the Bill be sent to a parliamentary select committee so that that fight can continue.

Hon. J. K. McLAY (Minister of Justice): In mentioning the two companion measures that he said would also be necessary to give effect to his freedom of information proposals, the member for Auckland Central acknowledged the inadequacy of the material that he is asking the House to consider tonight. There is a need for any freedom of information review to include not only the material in general terms that the member is asking us to look at, but also a review of the Official Secrets Act, and also to introduce measures to ensure the privacy of the individual.

I listened with interest to what the member for Auckland Central had to say in moving the second reading of the Bill. I heard plenty of arguments in favour of the concept of freedom of information, most of them to the obvious amusement of his colleagues sitting around him, because they appeared to have been culled from learned magazines of one sort or another. But I did not hear one argument as to why the Bill should proceed any further, and I certainly did not hear any cogent argument as to why the matter should be referred to a select committee.

I say from the outset that the Government strongly supports the concept of freedom of information. It believes that New Zealanders should have reasonable access to information that is held by the Government, subject to the need to protect privacy and to protect the national security. That belief is not just expressed in idle words. Last year the Government established the committee under Sir Alan Danks, a tangible step, and asked the committee to report on access to Government information, confidentiality, security classification, individual privacy, and—the missing link in the proposals put forward by the member for Auckland Central—section 6 of the Official Secrets Act.

I take it from what the Opposition has said in the course of the debate and on previous occasions, that it too supports the concept of freedom of information, or, should we say, the freedom of some information. The member for Auckland Central has not been too quick to give us any information about who gave him the copy of the TV2 script he read out in the

House last week. Similarly, he has not shown any great regard for individual privacy which, as he acknowledged, is an important—I would say vital—factor in any move to provide freer access to information.

However, despite that somewhat inadequate performance on the part of the member, we on this side would be prepared to give the Opposition in general, and the member for Auckland Central in particular, the benefit of the doubt, and accept that they do believe in the concept of freedom of information. That is very important, because, whatever is said in the debate tonight, and whatever criticisms are made of the member's measure—and I will certainly want to make some at a later stage—and whatever is said about his motives and the timing of the Bill, or about the proposal to send it to a select committee, I believe that ultimately we must proceed further on the issue on a bipartisan basis. We have to get the proposals from the Danks committee: that will give us genuine and workable ideas for getting freer access to information at the same time as we preserve the privacy of the individual and the security of the State.

We should look first at the reasons the member for Auckland Central had for introducing the Bill. He claims to have taken the cause of freedom of information to his bosom, to have nurtured it, and twice to have introduced to the House a private member's Bill on the subject. The general public could have been excused if it had gained the impression that the member holds the issue of freedom of information dear to his heart. I too might have been excused had I got the same impression. What I want to know is whether or not the member is so interested in the issue of freedom of information that he has bothered to make any submissions to the Danks committee. Has he even indicated to the Danks committee his intention to make any submissions?

Mr Prebble: I certainly won't.

Hon. J. K. McLAY: The member has just said he certainly will not, and I suspect that not one Opposition member has shown the slightest interest in the work of the Danks committee. That demonstrates the real interest of the Opposition in the issue, by comparison with the members on this side of the House. Both the member for Hamilton West and the member for Waipa have communicated with the Danks committee, and I have here a copy of a letter sent by the committee to the member for Waipa, thanking her for her interest in the committee's work and indicating that at a suitable time it would like to meet with her to discuss her views on freedom of information. I am quite certain that any member, Government or Opposition, who similarly showed an interest in the work being done by the Danks committee, could meet with it and discuss their views. But the Opposition has not shown an interest. The member for Auckland Central has told us that in no circumstances would he make submissions to the Danks committee. In other words, the Opposition is interested in "grand-standing" on the issue, it is interested in the publicity, in the editorials that will be written, and it is interested in taking up other people's ideas and introducing them to the House for the publicity that might be gained as a result.

I seriously question the motives of the member for Auckland Central, and I seriously question whether in fact he and other Opposition members are in any way dedicated to the issue. The member has told the House that the Bill we are now debating is based on a draft prepared by the Public Issues Committee of the Auckland District Law Society. The suggestion inherent in what he and other members said during the introductory debate, is that, because the Bill has been drafted by lawyers outside the House, it should, for some reason, be regarded in some way as a sacred document, and that we should not question its principles or its drafting. I will continue to question the draft and its contents, regardless of its source, and I do so for a very good reason. I believe that the Bill would place greater restrictions on the availability of information than those that exist at present. I intend at a later stage to demonstrate to the House that that is so.

What is more important is the fact that the Auckland District Law Society sent the draft Bill, and the report that it formed part of, to the Danks committee as a submission. As with a number of submissions, I understand that the committee has met with the two lawyers who drafted the Bill and has pointed out to them what I have just said—that there is a great danger that the list of items that they have enumerated in the Bill is such that less, and not more, information will be available. I understand that, as a result of that discussion, the two lawyers who drafted the Bill have appreciated the difficulties that have arisen and have gone away to reconsider their proposals. Did the member for Auckland Central tell the House about that? Did he tell us that the two lawyers principally responsible for the drafting of the measure are, as a result of their discussions with the Danks committee, having a further look

at their proposals and, if necessary, will be coming back to the committee?

Let us now look for a moment at the timing of the Bill. The member for Auckland Central claims that he has introduced it because of apparent lack of progress by the Danks committee. The committee was established in July 1978. It was then acknowledged that it faced a formidable task, one that certainly could not be completed quickly. Overseas experience tells us that that is so. It has taken 7 years for the work of the Franks committee in the United Kingdom to begin to bear fruit; and it has taken 4 or 5 years since the first efforts were made in Australia for even a tentative Bill to be introduced to the Australian Senate. Clearly, no Government has found the answer to the problem easy to find or easy to implement. Moreover, members opposite will know that those countries that have moved speedily on the issue, that have moved too quickly, have done so to their regret.

When I spoke on the introduction of the Bill I said that earlier this year I had spoken to a noted Auckland environmentalist, one who takes a very deep and abiding interest in the issue of freedom of information. He expressed to me his fear that Parliament might move too quickly into what he regarded as a highly sensitive area, and would make the same mistakes that had been made overseas. That fear was reiterated in a letter that I received, and the member for Auckland Central received, from the Environmental Council. It is obvious when one reads the letter—and I will read from it later—that the council, like the rest of us, believes strongly in the idea of freedom of information. But it is sufficient to say that the council believes also that the issue of freedom of information is complex and difficult, that it requires detailed consideration of a number of important questions, and that that consideration that is being undertaken by the Danks committee should be completed and made public before the matter is considered by a parliamentary select committee.

The member for Auckland Central also criticised the composition of the Danks committee. He said it was composed mainly of civil servants. We had better set the record straight. The chairman of the committee is Sir Alan Danks, a former chairman of the University Grants Committee and, before that, Professor of Economics at Canterbury University. Another member is Professor Ken Keith, one of New Zealand's most respected academic lawyers. There are other members who are civil servants. The member for Auckland Central, in his typical style of denigration and abuse, makes it clear that he regards civil servants as being in some way disqualified from considering this issue. They have a vested interest, he suggested. He said they were bureaucrats. I have no love of bureaucracy, but I believe that a committee balanced between outside interests on the one hand and civil servants on the other is the type of committee best equipped to give the right answers on this complex issue. After all, civil servants, above all others, are the people who every day handle sensitive and confidential information. Above all, lest it be suggested that they have a vested interest in this issue, they are the people who are bound by the terms of the Official Secrets Act, the people who are most fettered by its provisions, and the people most likely to benefit from any change likely to be made. I am confident that the committee, balanced between academics and civil servants, will produce valuable recommendations.

The member for Auckland Central criticised the committee on the basis that the work is being done in secret. The fact is that the work is no more secret than the work of a parliamentary select committee, to which the member would refer the Bill if he had his way. The committee is meeting many of the people who have made submissions and has discussed the issues important to them in a "question and answer" type of session, a situation that would never arise in a select committee discussion. Like a select committee, the committee's considerations and deliberations are held in private, but its report will be made available for public discussion.

I now turn to the provisions in the Bill. In doing so I emphasise the fact that the Bill was drafted by two lawyers outside Parliament, and the fact that it has been adopted by the Public Issues Committee of the Auckland District Law Society does not make it a sacred document. The two lawyers, both of whom I know, would be the last people to suggest that the draft is the final answer on the issue. From discussions with the Danks committee they are obviously aware of the difficulties the Bill has raised.

Clause 2 contains the definitions. It has a number of flaws, probably the most important being the inadequate definition of the authorities and bodies that would be bound by the terms of the Bill. For instance, does the expression in the Bill—and the member for Auckland Central might reply on this point—"every body or authority having administrative powers in relation to the public" include tribunals, particularly those that have functions similar to the courts? I am not arguing that every tribunal should have the ability to bottle up

its information. However, I think that even the member for Auckland Central, who has somewhat quaint ideas about the judiciary, would agree that the tribunals adjudicating disputes should have some protection in respect of the information they hold about the personal or business affairs of individuals, which might be sensitive.

The next matter that concerns me is the role of the ombudsman. I understand this matter has been discussed with the authors of the Bill. It effectively alters the functions of the ombudsman from that of an investigator of administrative Acts, as he is at present, to that of a judicial officer. When I express it in those terms members of the House will appreciate that it is a radical change. At the same time the Bill makes it impossible for the decisions of the ombudsman, acting in that judicial capacity, to be reviewed by the courts. That is a very radical notion. It concerns me and it should concern Parliament, which established the role of the ombudsman.

Clause 6 effectively limits the type of information that can be made available. I will not go into much detail about this, but will put a proposition to the House that is irrefutable. In giving a detailed list, or an enumeration, of the categories of information that need not be made public, it is almost certain that the Bill will ensure that less information will be made available to the public rather than more. For instance, at the moment a court of law might well order that evidence be given despite a claim of Crown privilege. If the Bill became law and the evidence in question came within any one of the categories in clause 6, there would be no way that the court could order that the evidence be given.

Mr Lange: Under clause 7.

Hon. J. K. McLAY: Not even under clause 7. It is insufficient to save the provision, because it relies entirely upon the decision of the Attorney-General and not the decision of a court of law. In other words, the right hard won by lawyers in court cases since the second world war would be done away with by the stroke of a legislative pen.

The Bill has other defects and inadequacies, but suffice it to say the exemptions are too wide and in other parts too narrow. For example, paragraph (b) would exclude from disclosure the mass of non-confidential information that is even today released on an entirely voluntary basis by the Ministry of Foreign Affairs. The provisions in clause 7 do nothing to cure that.

I turn finally to the question of whether the Bill should go to a select committee. The Government's view is that it should not. Earlier I mentioned that I received yesterday a letter from the Environmental Council. The member for Auckland Central received a copy of the letter. He said that every reply he had received to his letter had supported the suggestion that the Bill be sent to a parliamentary select committee. I shall read from the letter I received, which is identical to the letter received by the member for Auckland Central. I shall not read the entire letter unless Opposition members insist that I do, but I am willing to table it. "The Environmental Council has for some time given consideration to this complex problem of freedom of information, particularly in relation to environmental issues where informed public participation is essential. In its deliberations the council became only too aware of the complexities and difficulties involved. Considerable discussions were held with people from outside the public sector as well as with senior Government officials and there is no doubt that the process of consultation resulted in a clearer mutual understanding of the problems. However, it was abundantly clear that not only were the principles involved of wider application than to environmental information, but also that wider ranging and more in depth detailed consideration was necessary." The letter also states: "Whatever new policy approach is adopted there is a need for thorough studies of practical problems, such as classification, storage, and retrieval of information. The Environmental Council supports the idea of a bipartisan select committee, but in accord with the council's recommendations of last year it believes the study suggested should be undertaken first. The council considers that, for example, the findings of the Danks committee on official information should be publicly available before there are any select committee hearings, in the belief that those findings will give a lead on the policy issues involved and the practical implications of introducing the policy." If any member of the Opposition wants me to table the letter I am prepared to do so.

I challenge the member for Auckland Central to tell members how, having received a copy of the letter, he can claim that the people to whom he wrote were unanimous that the Bill be sent to a select committee. I know that the member for Auckland Central has been canvassing far and wide for support and that he has received telegrams in support. Telegrams have also been sent to me. I intend no criticism of the organisations that have given support,

but the fact is that in the time available it has not been possible for the organisations to consider all the ramifications of the proposals. I prefer the considered view of the Environmental Council. The letter makes it abundantly clear that the council has been involved in the issue for a considerable period. I prefer the view of the council that the report of the Danks committee should be available before the matter is sent to a select committee.

In the final analysis, the problems are fourfold. First, the drafting contains many errors, many flaws, and many misunderstandings. The authors realise that, and it is hoped they will make further submissions to the Danks committee. Secondly, despite the laudable aim of increasing the amount of information available—and it is a laudable aim that members on this side support—it is almost certain that the provisions in clause 6 would have an effect directly opposite and would decrease rather than increase the flow of information. Thirdly, it is abundantly clear that the question of freedom of information is not one on which decisions can be made overnight. That has been the experience in Australia, the United Kingdom, and many other countries.

Fourthly, and finally, the introduction of the Bill is premature. The consideration of the issue by a parliamentary select committee would pre-empt and virtually make redundant the work being undertaken by the Danks committee. None the less, the Government's 1978 election manifesto makes it clear that it shares many of the objectives behind the Bill, and that there should be greater freedom of information. Like the member for Auckland Central, the Government looks forward to a bipartisan approach to the issue. However, it believes that this can be achieved only after the Danks committee has reported, and the Government is able to give the whole issue a considered and rational assessment. It is for these reasons that, although the Government is permitting a second reading of the Bill, it will not be referred to a parliamentary select committee.

Mr CAYGILL (St. Albans): I am extremely disappointed at the Government's attitude to the Bill. Instead of adopting a sensible and considered proposal, it prefers to delay reform, and to shield behind the excuse that the matter is already being investigated by a committee. I mean no disrespect to the Danks committee, but this is reminiscent of the matter to which I referred in my maiden address—too much of our law reform is reform by committee. That procedure is simply too slow and uncertain.

The Minister, when he finally wound down his tirade, referred to his party's manifesto. I am glad he did, because a careful reading of that amazing document shows how frequently the Government resorted to such words as "review", "investigate", and "consider". The Government either believes in the principle of free information, or it does not. New Zealanders want a Government that is open. New Zealand could have led the world in instituting open government. It has been willing to lead the world on other occasions, but apparently not on this matter. New Zealanders must now watch while American citizens benefit from a simple system of access to Government information, a system very similar to that set out in the Bill. The Minister was quick to challenge several provisions in the Bill. However, all of the matters to which he referred could have been readily resolved if he, or his Government, had allowed the measure to be referred to a committee. There is nothing in the Bill so major that it could not have been readily resolved by the Statutes Revision Committee, or any other committee.

The basic provisions of the Bill are important. In my view, the key provision is that under the provisions of the Bill a citizen would need only to make written application—and I quote from Clause 4—"to any public authority for the disclosure in writing of any official information . . .". In other words, the Bill proposes a very simple operating mechanism along the lines of the American system—a citizen wanting information simply applies for it.

I want to give three illustrations of how this might have worked to the benefit of the community. The first is that of several environmental groups—for example, the Native Forest Action Council—which I think all members would agree have for years had to conduct an almost running battle with the Forest Service, and one or two other Government departments, to obtain information about their future intentions. That battle has served no one, but has helped to sour the relationships between Government departments and groups such as the Native Forest Action Council, which comprise people who are extremely interested in helping the work of those very departments. My second example relates to a news item on TV1 on 29 March 1968, in which it was stated that the New Zealand Geological Society—a group not normally given to press statements—was incensed at what it saw as the Government's adamant refusal to make available geological information, in this instance, the data on which drilling sites had been determined. Although this is not a very contentious

matter, it is an important one, because, as I understand it, drilling sites involve a lot of money, probably millions of dollars. This august body of experts—and I mean that sincerely—had asked the Government for the data on which drilling sites had been selected. However, despite the fact that these experts knew what they were talking about, and despite the fact that they could have helped not only the Government, but also the people to save possibly hundreds or even millions of dollars, that information was not made available. That sort of problem is avoided in this legislation.

The final example is perhaps more notorious—that of the ill-fated merger of Air New Zealand and NAC. I recall that when the Minister of Transport, the same Minister who holds that portfolio today, was asked to release a document that apparently justified the merger, he replied—and I think I have his exact words—“If I released that document I would have no senior civil servants.” I mean no disrespect to those civil servants, but if that reply was accurate, then they misunderstand their job, which is to serve the public. I contend that this kind of information, which is of public interest, should be made available.

I chose the examples I have given fairly carefully. Members will note that none of the three examples referred to an individual versus a department of State. I am sure members could think of dozens, if not hundreds, of examples of ordinary individual citizens who were deprived of information to which they had a right. However, in addition, many responsible groups such as the New Zealand Geological Society are being deprived of information that it would be in the Government's interest to release.

The Minister indicated some dissatisfaction with clause 6, which deals with the criteria the Minister would have to apply when deciding whether or not to release information. I have already suggested that the remedy is very simple. If the Bill were referred to a select committee the list of criteria could be easily and effectively amended. As has been pointed out, there is yet another answer. Although the Minister may not be obliged to disclose documents, as in the cases I referred to, he could choose to release them. He could consult the Attorney-General, and the information could be released under the provisions in clause 7. The Bill sets out a special list of criteria that resolve the circumstances in which information shall or shall not be released. That is a vast improvement on the present position, because at present there are no such criteria. The matter rests entirely on the discretion of the Minister, although—and the Minister seems to derive some satisfaction from this—one may take the Government to court. However, the alternative of court action is, I believe, unsatisfactory. It is not a question of having any disrespect for the courts. The Minister, as well as everyone else in the House, must understand the cost, the difficulty, and the reluctance that individual members of the public have about going to court. We need a simple, straightforward system that sets out criteria, as does the Bill.

Finally, if there is a dispute, which undoubtedly from time to time there would be, between the Minister on the one hand and a citizen claiming access to information on the other, that dispute is settled by the Ombudsman. That is a highly desirable provision. It is a simple and effective framework provided by the Bill, which is not surprising as the Bill was prepared by a committee of the Auckland District Law Society. The Minister may not derive any satisfaction from that, but I suggest he is being unfair, not only to the members who did the work, the people who drafted the Bill, but also to the Auckland District Law Society, which set up a Public Issues Committee to consider precisely this sort of circumstance. The committee has endorsed the Bill, not because it believes it to be perfect, but because it believes that the Bill's principles are appropriate and its provisions desirable. The Government's readiness to shrug the matter aside is an indictment of the committee's work.

I want to leave the House with this thought: the Government is often described as a big brother. That is not necessarily a bad description of a Government. It might be a particularly accurate description of this Government, but in general it is not a bad description, because a brother can be someone who is looked up to, or he can be someone who is feared. He can share his knowledge and talents with his family, his friends, his acquaintances, or he can become withdrawn and aloof, uncaring of the harm his attitude may cause to himself and others. The Government appears to be making the wrong choice, or at least postponing the choice unnecessarily.

Mr THOMPSON (Horowhenua): I rise to support the remarks of the Minister of Justice. The Bill was introduced by the member for Auckland Central with typical high-flown emotional phrases designed to attract a few headlines. The member for St. Albans tells us to rush in regardless. He admits there are problems, because he says a select committee will cure them all. The problems are there all right, but he gave us an interesting and

meandering tour around the commercial world, and talked of some matters that might have been resolved. The member for Auckland Central has introduced a relatively simple Bill to cope with an issue of enormous difficulty. There is nothing wrong with trying to produce simple legislation. It would be an advantage to the Opposition. But legislation must be capable of solving the problems it sets out to deal with. Access to Government and local body records is fraught with enormous difficulties, and this has been admitted by all speakers tonight. The full range of problems has not yet been identified, so the nature and scope of the legislation cannot yet be established.

The Minister of Justice has said that the Government supports the ideal of more open government, even though some recent examples of openness have led to quite a lot of criticism. The Government has taken steps to identify the general objectives, and what it sees as the need for legislation in this field. It has established a committee to consider the problems. Sir Alan Danks is working now, and it would be quite unrealistic to surge ahead with a simple Bill, ignoring the value of the work that will be available from the committee. However, the interest of the member for Auckland Central is appreciated, and we hope he will be open minded and supportive when the Government, with proper advice and mature consideration, is able to move more effectively with legislation on the subject.

We were told that the draft Bill was perused by a committee of the Auckland District Law Society, and that it has its support in principle. That is interesting, but it is of little value unless the complete Bill has the full weight of the New Zealand Law Society behind it. It has not. We know what happens with a small group. It calls itself a committee, and issues a report reflecting the personal views of its members. If the Auckland District Law Society supported the Bill in full, it would, by sheer weight of numbers, be able to persuade the New Zealand Law Society to support it and give an official pronouncement upon it, but that has not happened. A small group, no doubt friends of the member for Auckland Central, has patted him on the back and said the principles are O.K., but that is not enough.

Mr Jonathan Hunt: Why is the member opposed to it?

Mr THOMPSON: I notice the member for New Lynn has moved closer to me, just across the aisle, and is interjecting. That is a comfort. I assume he is listening to what I am saying.

Mr Jonathan Hunt: A point of order, Mr Speaker. I should like a ruling. I concede that I was talking to the member for Heretaunga. I did make one comment, not a very loud one, to the member who was speaking, because I could not restrain myself from commenting on the argument he was pursuing. I do not think that is against Standing Orders.

Mr SPEAKER: We need not waste too much time on this point of order. It is generally recognised that it is not in order for a member deliberately to move to a seat that enables him more conveniently to carry on an interjectory war against the member who is speaking. But if a member has moved to another seat to carry on a conversation with another member, and is then constrained to toss out an interjection or two, that is a different matter altogether. I doubt if the honourable member was doing anything out of order in interjecting from where he is. He would have been had he persisted too much, but I do not think the member for Horowhenua was unduly upset by the odd interjection from the member for New Lynn.

Mr THOMPSON: I am grateful for your ruling, Mr Speaker. The member for New Lynn has indicated *sotto voce* that he meant no harm, and I am grateful for that. The member for Auckland Central, as a member of the Statutes Revision Committee, will know that legal views are received by the Government through the profession's parent body, the New Zealand Law Society, but as that has not happened in this case, little weight can be given to the member's claims. He has referred to the fact that parts of the Bill have been shown to certain organisations. As the Minister of Justice said, a letter has been received from one of those bodies. Has the member for Auckland Central received this letter from the Environmental Council dated 12 June, and has he been completely frank with the House about the information supplied in the letter?

That is a direct question I want him to answer when he has the opportunity to reply. We have not heard any detail on the Bill from any of those organisations referred to by the member for Auckland Central, and that is a weakness.

Members will know that this is a re-run of a similar Bill introduced by the member for Auckland Central in 1977—and I say “similar” advisedly. There are some significant differences, the most startling of which is a proposal excluding courts from the appeal procedure. This throws into bold relief the attitude of the member for Auckland Central to our courts, an attitude exemplified by his observations over the last few weeks. To say the

very least, it is curious that a spokesman on justice should believe that our judges should be heavily criticised about the Hunua judgment, make an effort with alleged drug disclosures to sidestep our legal system and instigate an investigation and presentation of evidence at what would basically be an inquisition of the House, and then come up with the provisions in the Bill. This curious combination of examples illustrates the attitude of the member for Auckland Central to the courts. He has not identified the present position of discovery against the Crown in respect of Crown privilege. The Crown is not sacrosanct. There have been many instances when the courts, in proper cases, have opened their files and ensured the availability of information. Indeed, the case of *Pollock and Pollock* in 1969, when the present Attorney-General was successful in securing an order against the Crown, is, in the circumstances, a most suitable example.

I do not have time to deal with the specific clauses of the Bill. Summing up, we on this side of the House agree that the spirit in seeking more open government and freedom of Government and local body resources is to be commended, but we should not rush into this legislation, and we should not duplicate the work of an impartial body under the chairmanship of Sir Alan Danks. We support the spirit, but say that the solution proposed in the Bill is misconceived.

Hon. A. J. FAULKNER (Roskill): I support the ideas of the member for Auckland Central on the Freedom of Information Bill. It seems that the Government can never be objective about anything that is done by the member for Auckland Central, but always seems ready to drop its bundle and find every possible reason to rubbish this enthusiastic reformer.

Hon. T. F. Gill: There's no question.

Hon. A. J. FAULKNER: There is no question about that. Government members cannot stand my supporting a colleague I have known for many years as a reformer, not only in the House, but also in the Labour Party. I know that a conservative party always distrusts—to use the line of the Minister of Police—anyone who wants to reform anything. The member for St. Albans said he was disappointed by the Government members. When he has been here a few more years he will understand that that is how they are. They are always opposed to anything new that requires a little effort and consideration, particularly if they have not thought of it first.

Dr Bassett: That's a shame.

Hon. A. J. FAULKNER: That is a great shame. If we could open up some of the information that is at present held for no real reason, even they might be inspired to say, "Look, having got that information, we can be a little more progressive." That is basically why the member for Auckland Central has brought in the Bill.

I listened carefully when he introduced the Bill, and even more carefully tonight, and not for a second did he claim that it was drafted to the level of perfection and finesse that the Government claims for its legislation. I know, as do Government members, that year in and year out a Minister will bring a Bill into the House, convince the select committee and the House that it is perfect, have it passed, and the next year, without any "beg your pardon" or "by your leave", bring in an amending Bill correcting, in the light of experience, a Bill previously claimed to be perfect. I have done exactly the same thing.

I am not saying that such mistakes are necessarily confined to the National Government, although it has made mistakes more frequently than a Labour Government, simply because it has had more opportunity. The only balancing factor is that when Labour members are in the Government are they committed to reform, and therefore are more liable to make mistakes because they are trying to do something. That is all that the member for Auckland Central is trying to do. I commend him for it, and I think the public commends him for it. His enthusiasm, optimism, and general zeal to make this country better are widely recognised—again a reason for everyone on the other side of the House to have a sort of breakdown in objectivity whenever he proposes anything.

Hon. M. Rata: A hang-up.

Hon. A. J. FAULKNER: "Hang-up" is the modern term for it. Reference has been made to the Danks committee. I have had the good fortune to be associated with almost every member of that committee. In my experience, every one of them has a deep respect for Parliament. There is no question that every one of them is a loyal civil servant. Every one of them has been associated, as I have, with documents the nature of which—confidential, restricted, top secret, or the like—it has been difficult to determine, because that is the name of the game in terms of the responsible positions they hold. But, because they are also loyal

New Zealanders and, I think to a man, totally dedicated to democracy and to this Parliament, they would be the first to seek a parliamentary view on this whole question before a select committee. It has been said that the committee needs to be open to the media. So it does, but the information is such that the meeting has had to go into committee. We did it with the Massage Parlours Bill. Why can we not do it with the Freedom of Information Bill?

Hon. David Thomson: Why suppress information like that?

Hon. A. J. FAULKNER: Because we want to protect the individual's position, and I think the Minister was a party to it. Why not? That is common sense, and the people expect it of us. In response to the remarks of the member for Auckland Central, the Environmental Council made this very point in a letter to the Minister. The member for Horowhenua asked if the member for Auckland Central had received the letter.

Mr Prebble: Yes, I told the House.

Hon. A. J. FAULKNER: Yes, but in addition to that the suggestion was made, without any supporting evidence, that the letter was opposed to the idea. Like the member for Auckland Central, I have read the letter, and I believe the Environmental Council supports the Bill, and the concept behind it. It states: "The Environmental Council supports the idea of a bipartisan select committee, but in accord with the council's recommendations of last year it believes the study suggested should be undertaken first." There is nothing wrong with that.

Hon. J. K. McLay: Read on.

Hon. A. J. FAULKNER: "We believe that the select committee should meet now." Why not? It is our information. Even the Danks Committee belongs to us, and there is no reason why a select committee cannot meet and consider the whole concept and perhaps be of help to the Danks committee.

Hon. J. K. McLay: Read the rest of the paragraph.

Hon. A. J. FAULKNER: The Minister of Justice might give lip service to the concept of freedom of information, but in practice he rubbishes the concept by saying, "Some day we will do it." He emphasises the difficulties, and fails to take the opportunities proposed in the Bill to put it before a select committee, have a look at it, and perhaps even explain some of these complexities to the House, if it is not secret. If it is such a secret that it cannot be discussed publicly, why can he not tell the Opposition about the complexities that are bedevilling him into a further delay of a couple of years? It seems to me to be no problem at all. I remind the Minister of Justice—he will not recall it because he was not a member at the time—that the select committees were opened up for the first time under a Labour Government, by way of an almost automatic decision of the House acting on a suggestion made by the late Rt. Hon. Norman Kirk—and at that time the National Party did not agree. When Labour again becomes the Government they will be opened up even further, and information that can properly be made available will be made available. Some years ago a department was so confused about what it could release to the public that it actually marked its own press releases "confidential".

The Government's attitude tonight has been a bit poor. I am the first to concede that there are problems. Of course there are. However, I believe that it is not beyond the capacity of Parliament—and I stress the word "Parliament"—to solve, or to assist in solving, the problem, perhaps with the assistance of the Danks committee and with the help of Ministers at present in the position I myself have been in. With that kind of evidence, experience, and approach, it would be possible to do a lot more good rather than criticise the member for Auckland Central for his zeal, fire, and ideas of reform. Parliament is dominated by a conservative view expressed by members here on a minority vote. It is time some of the information available was brought out into the open. That would do no harm to the security of the State—I would never be a party to that—or to any individual who becomes involved with a department. The public consensus is that the Government should take control and provide the information, and the fact that the Government is denying the public the information it requires is a denigration of democracy. No one in the House—and I do not claim any special virtue in the matter—is at all satisfied that we are giving the people of the nation the information they need to judge us when making a decision that will enable them to fulfil their lives in accordance with the concepts and approach of the ruling party. If such a reform is considered major in this day and age, I can really understand the frustrations of the member for Hamilton West. It is bad enough being a member of the Opposition in such circumstances, but when one's own Government denies that principle it must be galling

in the extreme.

Having said that, the decision on whether or not a committee is to be set up is probably in the hands of the Attorney-General, despite his speech in the second reading debate and despite the fact that the Bill will be thrown out tonight on the ground that it involves an appropriation. I appeal to the Attorney-General to set up a select committee of Parliament—he can be the chairman if he likes—to seek ways and means of bringing the public into the confidence of the Government and Parliament. That committee could search out ways and means of increasing, in a very complex age, the communication between the governors and the governed. Is that too much of an ideal? And can we begin the task forthwith?

Hon. J. K. McLay: It was begun 12 months ago.

Hon. A. J. FAULKNER: No, it was not begun at all. A committee is sitting, but it has made no contribution. We, as a Parliament, should get together, and, even if we decide only to prepare a learned submission based on the experience of members and their relationships with the public, then at least we will have done some good tonight. That is my view.

The question is whether the Attorney-General will exercise the special right he has in that important matter. The responsibility is really his in a court of law, and he should make the decision in the court of the land. Will he take the initiative and support the member for Auckland Central, rather than adopt the more common attitude of confrontation he has learned in the courts of law? If the Attorney-General does take the initiative in setting up a committee, I think we will even be prepared to call the report the report of the McLay committee.

Hon. J. K. McLAY (Minister of Justice): A point of order, Mr Speaker. I wonder whether, in the interests of freedom of information, the member for Roskill will be prepared to table the letter from the Environmental Council, from which he has just read.

Hon. A. J. Faulkner: I shall be delighted to do that, because it is addressed to the Attorney-General.

[Letter, by leave, laid on the table of the House.]

Mr MINOGUE (Hamilton West): I should like to take up the last point made by the member for Roskill. I too believe that the time has come to spell out the areas of agreement on this matter, rather than the areas of disagreement. I believe there are some areas of agreement, even if an element of disagreement remains. Let us consider those areas of agreement. It seems to me that we agree that the need for freedom of information legislation is well established. The Government's manifesto is positive in its attitude to such a course, and I understand that the Opposition's manifesto is equally positive in its commitment to such a course. Therefore it seems that both sides of the House want positive action during this Parliamentary term. I think we are agreed on all of those matters.

I think we are agreed also that the Danks committee should report sooner rather than later. When we were told that the committee could be expected to report in the middle of the year, and then were subsequently told that it would be by the end of the year or possibly the beginning of next year, all of us were somewhat concerned that that very important exercise should not be unduly protracted. I believe we are agreed on that point.

We have also established that we are agreed on the basic essentials at this stage. First, we are agreed that a freedom of information Act that contains provisions adequately protecting aspects of personal privacy is required. We are agreed also that section 6 of the Official Secrets Act should be changed, and that its only admissible purpose in a democracy should be to restrain and punish espionage and gross breaches of trust concerning official information. Those sentiments on the Official Secrets Act are to be found in a book by David Williams called *Not in the public interest*. But that is only one book; the literature on the subject is voluminous. I suggest that we also have common ground on a basic matter such as that. In the third place, I am sure we agree that, contemporaneously with the passage of freedom of information legislation, an amendment to the Official Secrets Act is necessary. Also there is agreement that a system of classification of Government documents, which would determine what documents or what type of documents should be protected by the stamp of official secrecy, is necessary. Sir Guy Powles' report on the Security Intelligence Service contains useful comments on that aspect of the problem. It seems to me that we are agreed on all of those matters.

I urge upon the Opposition my belief that it is time we began to seek agreement on what remains; and it appears that there is disagreement on the matter of definition. However, I feel sure we can make some progress on that this evening. I propose to put to the Opposition

suggestions concerning that problem of definition that they may care to think about, and perhaps agree upon. I refer Opposition members to what I believe to be a very valuable document. It is a report of a standing joint committee on regulations and other statutory instruments in the Canadian Parliament. The report was prepared on 28 June 1978. Therefore it is a recent report of a Canadian parliamentary committee that considered very carefully the vexed question of definition. I am sure it is the best statement on problems of definition that we have yet seen in the Commonwealth. It may be improved upon by the commission that is now sitting in Ontario, but I suggest that some of the problems of definition are not as insoluble as we may think. I intend to quote from the report some of the definitions it contains so that people can compare them with those in the Bill and understand why the measure is not a basis for progress. I believe we can, by discussion of this kind, soon get to an agreed basis for progress.

I quote now from the Canadian document I have referred to, on exemptions concerning national defence. The committee said that the appropriate exemption should be worded, "Documents, the disclosure of which could be reasonably expected to be detrimental to the national defence". The committee commented that there should follow matters of example, e.g. tactical and intelligence strategic defence plans, internal and external intelligence, and security plans, because the committee was of the view that if the definition were not related in that way the exemption itself could be read so widely as to provide a general fiat for non-disclosure.

Hon. A. J. Faulkner: Unfortunately, it also opens it up—if it is not there you cannot say it.

Mr MINOGUE: I appreciate the member's remark. What I am saying is that we should find an agreed and intelligent basis for discussion, and I am suggesting that such a basis can be found in this document.

Hon. M. Rata: Has the Minister of Justice got a copy of that document?

Mr MINOGUE: We will come to that shortly. On international relations the committee's exemption is: "Documents the disclosure of which could be reasonably expected to be detrimental to international relations". My meaning will be grasped if that is compared with what is in the present Bill.

I come to Cabinet documents. The Bill before us puts virtually a blanket exemption on Cabinet documents. The exemption of the Canadian committee is: "Documents prepared expressly for or in connection with the deliberations or decisions of the Cabinet or of a Cabinet Committee but not including documents composed of mainly factual or statistical material". There is a world of difference. In Sweden, the Cabinet exemption has been used by crafty bureaucrats as a means of obtaining wide exemptions. If they think a document is difficult they shoot it into the Cabinet room quickly, get a Cabinet stamp on it, and, hey presto, it is exempt. We have to be aware of the ways of some of the gentry of the bureaucracy and guard against them. I suggest that this, too, provides an intelligent basis for common discussion.

Then there is the vexed question of policy advice. Commenting on exclusions, the Canadian committee says this: "Documents containing matter in the nature of an opinion, advice or recommendation prepared by an officer of an agency or department and submitted to an agency or department for consideration in the performance of any function leading to the making of a decision or the formulation of a policy". People in the State service will say that they cannot have people breathing down their necks at every stage of the operation. This kind of exemption looks after that situation.

On law enforcement, it is very important that we define the exclusions with great precision. The Canadian committee says: "Documents the disclosure of which would have a significant adverse affect on law enforcement activities but only to the extent that disclosure would be reasonably expected to (a) interfere with enforcement proceedings, (b) deprive a person of a right to a fair trial or an impartial adjudication"—and there are various other specifications.

The comment of the committee in this connection is that an exemption pertaining to law enforcement must be specifically defined in such a way as to permit the greatest possible degree of public scrutiny of law enforcement activities. I do not think there would be any disagreement with that. The committee goes on: "There is a large category of documents connected with law enforcement which should routinely be disclosed, for example: inspection reports; a document revealing the use of illegal law enforcement techniques or procedures; a document revealing that the scope of any law enforcement investigation has

exceeded the limits imposed by law."

Concerning personal privacy, the exemption suggested is: "Documents the disclosure of which would constitute an unwarranted invasion of personal privacy or documents which are voluntarily supplied to the Government on the basis that they be kept confidential". On legal opinions, the committee comments that the exemption should be for "Documents the disclosure of which would reveal (a) privileged communications between lawyer and client in a matter of Government business or (b) legal opinions or advice provided for the use of the Government unless a Minister or other senior Government official refers to a legal opinion in support of a Government action in which case the legal opinion would not be protected." The exemption for commercial or financial information is defined thus: "Documents the disclosure of which would reveal trade secrets or other commercial or financial information that if divulged would be reasonably likely to (a) impair the Government's ability to obtain necessary information in the future or (b) cause significant harm to the competitive position of the commercial or financial enterprise from which the information was obtained." In addition to urging care in definition, the Canadian committee goes further—and here is a point that should not be overlooked—and urges a review of all relevant statutes so that any provisions respecting confidentiality can be amended to conform. Legislation is ultimately envisaged in the form of a Freedom of Information Act.

The Canadian committee also comes to grips with the vexed question of the review process. It comments on the five possibilities that were put before it. The first was scrutiny by Parliament; the second was the appointment of an information auditor; the third, the appointment of an information commissioner with power to examine documents and issue advisory reports; the fourth, the appointment of an information commissioner with the power to order release; and the fifth was an independent judicial review. The committee—and I commend this to the attention of all concerned—finally recommended a combination of the third and fifth options. It then had something to say on various other critical matters such as burden of proof, fees, time limits, and other important factors.

I suggest to members opposite, and particularly to the member for Auckland Central, that it seems to me we have a large basis of common-sense consensus in this matter. I hope that before too long the Danks committee will report and that we can explore this common ground and reach an effective bipartisan understanding and agreement on what really is required. I would urge the examination of the documents I have referred to so that we might indeed come very readily, perhaps, to a position whereby the House comes somewhere near to indicating to the Danks committee what seems to it at this stage an acceptable mode of procedure. I hope we reach that position soon.

Mr TERRIS (Western Hutt): Government speakers have made it clear that there is widespread support among a range of interested groups in this country for greater freedom of information. That is as it should be. The member for Hamilton West has endorsed the principle. I ask him, therefore, what we are waiting for. Why has he failed to follow up the invitation offered to him by the Opposition to set up a select committee? Why all this legal casuistry by the Government? Citizens want to know what the Government is doing and why, especially when there is a minority—39 percent of the popular vote—Government, indicted as being unrepresentative by one of its own members, the member for Waipa.

The Government is the biggest concern in the country, and its operations affect the legal rights of people every day. The time has come to do something about this matter. Even people who are most closely affected—the staff of the State Services—are behind such legislation. The Public Service Association is on record as endorsing the principles embodied in the Bill. A large number of other groups have also been referred to, and the member for Hamilton West is on record as supporting the principle. Unfortunately, he seems ready to bless the principle, but apparently he is not prepared to support the Bill. So much for drawing-room liberals.

Mr Minogue: A point of order, Mr Speaker. I suggest that the member is reading from notes, reading *in extenso*, and non-stop, in fact, and not making a speech.

Mr SPEAKER: This is not a matter for a point of order, according to the Standing Orders. It is not considered proper for a member to read his speech unless he is making a technical type of speech, in which case he needs to refer extensively to notes. This is not a matter to be raised by another member; it is purely at my discretion to decide whether a member is reading his speech and, in the circumstances, whether he should not be reading his speech.

Mr TERRIS: The arguments in favour of the Bill have been extensively cased,

especially during the publicity given in 1977 to the activities of the Security Intelligence Service. It is as a result of a review carried out by one of New Zealand's finest administrators, a man who knows intimately the workings of Government, none other than the then Chief Ombudsman, Sir Guy Powles, that a review of the Official Secrets Act is now taking place. Bipartisan consensus that something needs to be done has already been expressed by the member for Hamilton West. Unfortunately there is a conservative tendency by the Government to put this off, but people want freedom now. Has the member for Hamilton West looked recently at the fast-growing list of laws and regulations that contain provisions relating to freedom of information? Let us have a look at it now. There is the Official Secrets Act 1951, the Crimes Act 1961, the Security Intelligence Service Act 1977, the Oaths and Declarations Act, the Archives Act, the Wanganui Computer Centre Act 1977, the Ombudsmen Act, the Statistics Act, and the State Services Act.

Mr Gordon Orr, a former Secretary for Justice, was moved to observe that it is an offence to disclose the number of cups of tea consumed in a Government office. People no longer feel they have any control over their lives. Burgeoning big Government leaves them helpless. The people want the right to know, because they are tired of being treated like mushrooms in a glasshouse—kept in the dark and fed on fertiliser. Sir Guy Powles' report embodies a suggestion that the Government accepted when appointing the Danks committee. However, it is something of a disaster for the advancement of the interests of freedom of information that the Danks committee comprises a preponderance of senior public servants—a group of people whose views on freedom of information are not very encouraging.

The Director-General of Forests was quoted in the *Evening Post* of 16 August 1977 as telling a seminar on freedom of information that it was wrong to put scientific and technical information before the public in a piecemeal way. He often wondered whether secrecy was fabricated by the media as a public issue. At the same seminar the Chairman of the State Services Commission said that in many cases information was not made public, because it involved considerable trouble for public servants to put out information in a form that the public could understand.

Despite the Minister's scepticism, the fact of the matter is that there is clear evidence that highly placed public officials share with the Government an entrenched conservatism regarding greater freedom of information. Is it any wonder that people have little confidence in the findings of the Danks committee? Governments and their officials naturally want to retain information, and the most recent example of that took place in the House when an Opposition member requested the release of a memorandum circulated by the Chief Electoral Officer to his returning officers on the day before the election. Government members bobbed up and down on points of order like corks in a pond. The advocates of freedom of information were strangely silent. The drawing-room liberals were all dressed up but had nowhere to go. If those members really support freedom of information they will agree to send the Bill to a select committee.

I am at a loss to understand the Government's fear of the Bill. After all, the Public Bodies Meetings Act 1962 gives members of the public the right to attend meetings of local bodies. If those meetings are closed to the public the items excluded, and the reasons for excluding them, must be stated. This brings the public into the decision-making process, and results in a better educated and better informed electorate. One is at a loss to know why the Government opposes the legislation. What is it afraid of? Is it afraid that its incompetence will be openly demonstrated? What does the Government want to hide? On the benches opposite do we have a Government on the run, seeking to cover its retreat? We must match rhetoric with action. It is not good enough for some Government members, including the Minister, to preach freedom of information without being willing to practise it.

I am reminded of the words in the National Party's glossy manifesto 3 years ago: "If it were possible to sum up the philosophy of the National Party in one word, that word would be freedom." Since then that sentiment has been expressed by many Government speakers. We have heard repeated references to the need to rediscover the philosophy of private enterprise and individual liberty, which is precisely what the Bill seeks to encourage. Let us put away the rhetoric and have freedom now. The member for Auckland Central said that a similar Act has operated in the United States for 10 years and is working well. If Government members are worried about the time, the money, or the staff needed, they can be assured that in the United States there has not been an uncontrolled flow of requests for information placing a strain on resources.

In Great Britain the Government produced a white paper proposing a similar Act, and such legislation is already in force in Europe. The Australian Government is considering a draft Bill, and New Zealand is far behind the international community in passing such legislation. Despite the problems of definition that have been raised by the member for Hamilton West, which could be dealt with by a select committee, the Bill provides safeguards that ensure certain classes of documents can be kept secret, such as those relating to national security, foreign relations, international trade, and information that might have a detrimental effect on the legitimate economic interests of the country. Parliament needs to act now to restore a sense of trust between the people and the Government. There is a growing resentment over red tape and the increasing influence of big Government. That must be corrected, and it must be corrected now.

Mr BRILL (Kapiti): The member for Western Hutt spent a lot of time making one point—that we need freedom now, and must act now. The Bill is permeated with that kind of thinking. The Opposition is not concerned with whether the legislation is right, or that we should deal with this very complex issue in the best possible way. Members of the Opposition are concerned only to be seen to score political points on matters for which they claim to have public support. As an example, I repeat the comment made by the member for Western Hutt, that public servants are suspect and cannot be relied upon. The member quoted a public servant, the former Secretary for Justice, Mr Gordon Orr, as saying that the present law prohibits the disclosure of the number of cups of tea drunk in Public Service buildings. If that is so, that prohibition is enforced by the provisions of the Official Secrets Act, and has nothing to do with a Freedom of Information Bill. Whatever deficiencies in the law the member for Western Hutt complains of, the Bill before us cannot resolve them, because it does not repeal the Official Secrets Act—a point that has been made by several Government speakers.

This piece of paper is merely a statement of the aspirations of the member for Auckland Central, to gain yet another headline. The Bill is not a properly considered measure to deal with the type of problem that his colleague has just been talking about, which is covered by a completely separate Act of Parliament—the Official Secrets Act. That Act is not covered in this Bill. The member for Auckland Central, who asked us to take him seriously, has been described by one of his colleagues as being a reformer. I suppose it is difficult to gainsay that, because he even re-forms the letters he receives. The member for Roskill was good enough to table the letter that was received by the member for Auckland Central from the Environmental Council, but he quoted selectively only part of that letter.

About the only argument that the member for Auckland Central has put forward in favour of the Bill is that he has received a great deal of public support. In fact, he told the House that he had universal support, and that among the mail he received, everybody agreed with his position and with the Bill; everybody agreed that the matter should proceed. That is the argument, and virtually the only argument he adduced in support of proceeding with the Bill now and sending it to a select committee. It is clear to the whole House that, on the other hand, the Government's position has been that although the principle of freedom of information is well accepted, the time to legislate is not now but after the Danks committee's report is to hand, as the member for Auckland Central said.

The member for Auckland Central says that the letter from the Environmental Council supports his viewpoint. I want to focus on this question, as the credibility of the member for Auckland Central is involved. He has told the House that this letter supports his viewpoint, not the Government's viewpoint, which is that it should await the Danks committee report. The member for Roskill read out this part of the letter: "The Environmental Council supports the idea of a bipartisan select committee, but, in accordance with the council's recommendation of last year, it believes the studies suggested should be undertaken first."

That is as far as the member for Roskill decided to take the House into his confidence, believing as he does in the freedom of information, but believing that the House should not know what the letter contains. He did not say that the next sentence reads: "The Environmental Council considers that, for example, the findings of the Danks committee on official information should be publicly available before there are any select committee hearings, in the belief that those findings will give a lead on the policy issues involved and the practical implications of introducing any policy." The member for Auckland Central, with his usual dexterity, will probably say that this does not really mean what it says, and that it really supports him. In that case, letters he has now received telling him he is an idiot, and letters that he has now received saying that people are totally opposed to the Bill, will

probably be interpreted by him as letters of support. So much for the principal argument that the member for Auckland Central has all sorts of public support. The only thing in front of the House is a letter directly opposed to that proposition.

The member has again indicated that he does not understand, even after the period he has been in the House, the function of select committees. Last week he was full of ideas that select committees should be set up as a sort of inquisition; that they should take the place of the criminal courts of the land and should undertake political witch hunts. He now proposes that a select committee's real job is to take a piece of paper that mentions the words "freedom of information", that leaves the subject half-baked, and start from there to develop a whole new policy and write a completely new law on freedom of information.

Before the matter is referred to the select committee, it should already be in a form in which it can be adopted by the House. This document is very far from being in such a form, and it could not be accepted in its present form. The member for St. Albans, who said specifically that he likes to think of the Government as his "Big Brother", told us that the Bill simply needs a little tidying up.

Could I refer to clause 2, the interpretation section of the Bill? It contains a provision that would make it virtually impossible for any commercial enterprise that has any Government participation to operate competitively. The clause defines a public authority as being any corporation, or other body, or organisation, or authority having administrative powers in relation to the public or to any members of the public, not being owned and operated solely by private interests. New Zealand Steel is not operated solely by private enterprise, and Tasman Pulp and Paper Co. is not operated solely by private interests, but these companies are in competition. We can go further and consider Air New Zealand. That company has considerable powers of administration over a number of members of the public. It is regarded as a public authority, and the minutes of its meetings presumably have to be tabled and made available to QANTAS and other competitors who might want to know what is going on in the Air New Zealand boardroom. That is the ridiculous nature of the restrictions in the Bill.

But to be consistent with his usual character, the member for Auckland Central totally contradicts himself in clause 6, which states: "Prohibition of disclosure in certain cases—No public authority, to whom application is made in accordance with the provisions of section 4 of this Act, shall disclose to the applicant any official information,—(a) Pertaining to . . . arrangements to which the Crown is a party—". This is not a discretionary provision; it is an outright prohibition, because it says that no public authority is permitted to disclose any official information pertaining to arrangements to which the Crown is a party. Does the member for Auckland Central really believe that it ought to be an offence for the Minister of Foreign Affairs to tell the House the contents of the Gleneagles Agreement? Is that what he is proposing? He has this broad, sweeping prohibition, not merely allowing the Crown to hide behind a protection, but prohibiting the Crown from disclosing any matter or agreement to which the Crown is a party.

The Bill goes from one extreme to the other, which is an indication of the lack of research and the lack of thought that the member for Auckland Central has put into the Bill. Let us consider what problems have been encountered elsewhere. We can start with New Zealand, because in 1977 the same member brought a private member's Bill into the House. He told us then that he had done the research on it himself in secret, and he told the House he had the answers. He said to the House, "This Bill is the answer, refer it to a select committee." The House rejected his plea; 2 years later he comes back with an entirely different Bill. In this Bill he states quite clearly that he now disagrees with what he said in 1977, when he thought he had the answers, and now says, "We will try this one on." Why should we accept his word that this time he has got it right? He himself admits that he had it wrong last time. It is equally clear that he has got it wrong this time. That is made clear by the fact that the Bill does not cover Crown privilege, the Official Secrets Act, and the principles for protection of privacy.

Here again is an example of the ubiquity of the member, his amazing dexterity in adopting a very strong view on privacy—as he does on almost every Bill of that nature that comes before the House—and now to adopt a very strong view on publicity. One moment he is adopting a very strong view on the lack of due process for drug suspects, and the next moment he is a civil libertarian believing in the rule of law. We have the same sort of attitude here. A privacy measure was supported by him in the last few days, and now he is in favour of a publicity measure. The member holds the view that it is a simple matter and that the Bill

can be readily tidied up.

The United Kingdom had the Franks committee sitting for quite some time. It reported in 1972, and that report has been debated and discussed, there have been private members' Bills in the Commons and in the Lords, but in 1979 they are still unable to get a satisfactory freedom of information Bill. The experience in the United States has been that they had 10 years of study and hearings in Congressional committees before finally introducing legislation. Then, 6 years later, they accepted that the legislation had failed and required extensive amendment. In Australia an inter-departmental committee sat for 2 years. It reported in 1974. That report has been discussed ever since, but the Australians have not yet decided upon a satisfactory format for a freedom of information Bill.

The member for Auckland Central quoted with approval the Canadian royal commission into the subject as long ago as 1977. The Canadian royal commission was still sitting in 1977. Now, 2 years later, it is still sitting, but it is not regarded as dragging the chain, it is regarded as doing an excellent research job in a difficult and complex area.

In New Zealand we are a bit slow catching up—we had a Labour Government for 3 years—but following the election of the National Government in 1975, and particularly following the encouragement from the member for Hamilton West whose whole project has been carpet-bagged by the member for Auckland Central—that is his main objective—the present Government brought down terms of reference and sent them to a committee for study. That committee is studying the subject right now.

In the same way as the precedent established overseas, when that committee's report is available I have no doubt that a great deal of discussion must take place regarding what it contains, so that we can confidently say we are doing the right thing. We are still very far from that position. The member for Auckland Central has put down some words on paper, wheeled it into the House, and decided that that will do, that we will send it to a select committee and take it from there. He has unbounded faith in select committees. In fact, the principle is right; that is not in dispute. In most of what he has had to say he has only been telling us what we already know. The Bill itself is ill-considered, is inept, is insufficient, and it does not deserve the support of the House.

Mr MARSHALL (Wanganui): Listening to the member for Kapiti I cannot but wonder how much longer we shall have to wait before we start to move seriously into the area of freedom of information legislation. It is true, as indicated by the member, that progress is slow at the start, but at least these other countries he listed have been thinking and moving on the issue for several years. It is about time that this House at least made a start. There was a time in the history of the House when it was possible to have a bipartisan approach on issues on which there was general agreement. There is no basic difference of opinion about the necessity to move in the area of freedom of information. It is time that we recaptured the spirit in this House of Representatives that if an idea or a proposition is good and sound it ought to be accepted and worked for by both sides of the House. The reputation of the House diminishes in the eyes of the general public when both sides of the House express themselves in exactly the same manner but, because we are the Opposition, our point of view is not accepted by the present Government. We are the poorer by the absence of a bipartisan approach. The time has passed when the people of this country elect their Government and then, with unquestioning faith, leave it to govern for 3 years. Increasingly the people of this country, and around the world, are sceptical about bureaucracy and the decision makers.

I was interested to see the very timely observations made by Mr Brian Elwood, the former President of the Municipal Association of New Zealand, to the New Zealand Planning Institute conference at Rotorua earlier this week. I quote from the *Evening Post*: "The growth of Government power in New Zealand lacks the checks and balances available in other Western countries. Mr Elwood said that New Zealand's democracy operated out of step with other nations of the Western world. He said the 1970s had been a decade which began with high hopes and finished with a sense of unease about the future. Mr Elwood said he had detected prevailing feelings of melancholy about our management of our collective affairs, the state of politics, and the growth and cost of Government." I believe that underlying those very telling comments by Mr Brian Elwood is a feeling which is abroad in the community that relates very closely to the kind of legislation we are talking about tonight. The lack of faith which many people have in their Governments is based on a growing feeling that information is inadequate and inaccurate and, too often, leads Governments into making inadequate decisions that are not good for

the people.

I want to mention one or two aspects of the administration of the Government and its predecessors, which confirm more strongly than ever the need for this kind of legislation. The first is the power of the Prime Minister's Department and the "Think Tank", a group of non-elected people who in the last 4 years have accumulated more power on the third floor than we have ever seen before. The second matter, which is of grave concern, is the growth of the power of caucus committees meeting behind closed doors to the detriment, in my view, of bipartisan select committees. The third matter is the failure to call Parliament together for 6 months after an election, and the great amount of government by regulation. If Parliament is not to be taken seriously, then it is time for the wishes of the people to be taken seriously.

I ask the Government to accept the Bill and to refer it to a select committee. Government members should allow the select committee to work with the Danks committee report so that the process will at least move ahead more quickly than would otherwise be the case.

Hon. DAVID THOMSON (Minister of State): It is a well known ploy among members to introduce a private member's Bill from time to time. It is a very good way of getting a headline. There is nothing wrong with that in politician's minds. If one uses someone else's thoughts when introducing a private member's Bill it is desirable that the member pays tribute to the ideas of the other person. The member for Auckland Central attributed his Bill to a report made by some members of the Auckland District Law Society. He said the Bill had been adopted by the society. The Auckland District Law Society is the biggest law society in New Zealand. I do not know why the member for Auckland Central suppressed the information, because his Bill is called the Freedom of Information Bill. The report states: "Particular attention is drawn to the introductory note attached to this report which explains that the committee does not and cannot represent the views of all lawyers nor the views of the council of the Auckland District Law Society; rather the committee is a group of Auckland lawyers, and although appointed by the council it is completely autonomous and expresses its own views."

The committee has nine members, who have done an excellent job. The member for Auckland Central was quite justified in enthusiastically bringing forward a Bill that represents the views of the nine committee members. I do not know why he suppressed that safeguarding information. He actually distorted the information when presenting the matter to the House. There is much more information available from official sources than anybody in New Zealand can absorb. Very little information is kept from members of Parliament, or from the public. It is the Government's policy to give as much publicity as possible to its administration. That has developed, I am glad to say, over the years with the opening up of select committees and is a good thing.

In recent years the Government has opened up for inspection the work of the Security Intelligence Service by establishing an SIS appeal authority. The Government has set up the Danks committee on official secrets under the chairmanship of Sir Alan Danks. The committee is due to report sometime in the near future. It is a great pity that the member for Auckland Central suppressed the information that the Environmental Council had made it plain that it considers that the findings of the Danks committee on official information should be publicly available before any select committee hearings are held. The member must recognise that his advocacy is suspect when he deliberately suppresses information. He read half of that letter, but he did not read the critical part which said when the matter should go before a select committee. The member failed to disclose that the Environmental Council stated it was essential to wait for the Danks committee report. That is the Government's view.

Mr SPEAKER: Order! I am sorry to interrupt the honourable Minister, but the time allotted to him has expired.

Mr PREBBLE (Auckland Central): I thank the House for allowing the Bill a second reading. First, I shall comment on what was said by the Minister of State and inform him that I have been informed by Mr Mann of the Auckland District Law Society that the society has decided that the Bill is so good that it will be adopted in principle. I give the Minister that information for the second time.

The Government has made a great deal of the letter from the Environmental Council. I take it to be a letter of support, even though Government members say it is not. The letter states that the council is in favour of a bipartisan select committee, and that is what I also

want.

The Minister did the House a grave disservice when he failed to mention that he had received many communications, copies of which I have, stating that the people believe that the Bill should be sent to a select committee. The Hawke's Bay District Law Society wrote a letter to the Minister stating that even though the Danks committee is meeting, the society believes the issue should be sent to a select committee. The Minister had that information, because the letter is addressed to him. He failed to tell members that. So much for his argument about letters. I have received many communications and I will table them if any member requests that.

Most members tackled the Bill in the spirit that private members' Bills are an important part of the work of the House. They give members the opportunity to discuss an idea and allow ideas to be properly canvassed. Most members debated the Bill in that spirit, and I thank them. The contribution made by the member for Hamilton West was a most thoughtful speech. The member for St. Albans gave a very good example of the type of information that is suppressed when he spoke about drilling holes. The member for Western Hutt also gave a fine example—and the Minister of State should think about this—when he spoke of a letter about the election of members to the House which was kept secret until it was forced into the open. Both the Minister of State and the member for Roskill pointed out what a select committee could achieve.

I was very disappointed in the speech of the member for Kapiti, because I believe it was a personal attack. He also deliberately misread clauses in the Bill. A Bill, drafted by a committee of the Auckland District Law Society, could not possibly be as bad as the member made out, and it is not. I want to make that very clear to the member. I have adopted this Bill in preference to my own, hoping that the sort of silly, carping, drafting criticism made by the member for Kapiti could be avoided. I also hoped that we could discuss the principles of freedom of information so that Parliament could make it clear to the Executive that it is not just a rubber stamp, but has an opinion of its own. I believe the speech of the member for Kapiti was disgraceful.

Mr SPEAKER: I am sorry to interrupt the honourable member, but the time allotted to him has expired. As I informed the House earlier, the Bill involves an appropriation and it is my duty to rule it out of order and order that it be struck off the Order Paper.

MAORI TRUSTEE AMENDMENT BILL

Second Reading

Debate resumed from 12 June 1979

Mr PETERS (Hunua): When the debate was interrupted last night I was drawing the attention of the House to section 35(2) of the Maori Trustee Act 1953, and in particular the effect of the proposed amendment on the Maori Trustee's consideration, now and in the future. The proposed amendment to section 35 of the Act allows the Maori Trustee to take cognisance of Maori needs that might arise in the future. I should like to draw attention to the present need for a programme of adult Maori education that would imbue Maori parents and children with the drive and motivation needed in modern New Zealand society. If such a programme was thought worthwhile then, under the Act, and because of increased expenditure, the Maori Trustee would be in a position to fund such a programme.

I am pleased to note that, by careful management during the past 4 years, the Maori Trustee now has funds for some of the laudable purposes set out in the original Act. I take the point made by the Minister of Maori Affairs that the money we are talking about is Maori money and accrues to the Maori people in the same way as money accrues to other New Zealanders through a will or by testament. It should be made very clear that this is not a charge on the taxpayers. It is not a handout. It should also be understood that if the money is spent wisely the result should benefit not only the Maori people, but all New Zealanders. The Minister has said that most of the expenditure will go to the social, cultural, and economic advancement of the Maori people instead of being invested in local, national, or Government securities. The increased expenditure by the trustee is not being disbursed in a selfish manner; in the coming year the money will be spent in an effort to extend the cultural frontiers of Maoridom. At the same time we expect a return of growing trade between those countries that are visited and our own.

I could not help noting with some concern the comment made by the honourable member for Northern Maori, who said that during his term as Minister of Maori Affairs the